In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 455

FRANK ONESTI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted in the United States District Court for the Northern District of Illinois of conspiracy with others to steal a letter containing a credit card and of a substantive violation of 18 U.S.C. 1702. He was sentenced to imprisonment for one year. The court of appeals affirmed the conviction.

The sole issue raised on appeal and in this Court is a claim that the judge considered impermissible matter in fixing sentence. The colloquy quoted by petitioner (Pet. 3-8) shows that the judge imposed a

one-year sentence (out of a possible maximum of five years on each count) because he was convinced that the violation charged was not an isolated transaction but one element of a broader scheme involving dealings by petitioner with a number of stolen credit cards. As the court of appeals noted (Pet. App. 3) the trial evidence as to the purchase of 18 to 20 credit cards stolen from the mail and evidence obtained under a search warrant amply justified such an inference.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1969.

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